

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
01/11/2002

01/04/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000228

Docket Code 512

FILED: _____

STATE OF ARIZONA

CATHERINE E LEISCH

v.

WILLIAM ALBERT BRITTON

MICHAEL H LEE

MESA JUSTICE CT-EAST
REMAND DESK CR-CCC

MINUTE ENTRY

EAST MESA JUSTICE COURT

Cit. No. #0272882

Charge: A. THREATENING AND INTIMADATING/DV

DOB: 08/09/74

DOC: 02/17/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of Oral Argument on December 5, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the East Mesa Justice Court, the arguments and Memoranda of counsel.

Appellant, William Albert Britton, was accused of the crime of Threatening and Intimidating, a Domestic Violence offense in violation of A.R.S. Section 13-1202(A)(1), a class 1 misdemeanor alleged to been committed on February 17, 2000 within Maricopa County, Arizona. A trial was held before the Honorable R. Wayne Johnson on March 29, 2001 in the East Mesa Justice Court. After the trial concluded Appellant was found

guilty. Appellant was sentenced March 29, 2001 to three (3) years probation. As terms and conditions of probation, Appellant was ordered to serve five (5) days in jail, to complete Domestic Violence counseling, and to have no contact with the victim, Stephanie Britton. Appellant filed a timely Notice of Appeal in this case.

First, Appellant contends correctly that some culpable mental state is necessarily involved in the commission of the crime of Threatening and Intimidating. Threatening and Intimidating is not a strict liability offense.¹ Some culpable mental state is required. Appellant argues that insufficient evidence was presented of any culpable mental state.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.² All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.³ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁴ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁵ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁶ The Arizona Supreme Court has explained in *State v. Tison*⁷ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁸

This Court finds that the trial court's verdict and its implied finding of a necessary culpable mental state is clearly supported by the record. The victim, Stephanie Britton, testified that she was attempting to walk away from Appellant and "he kept trying to stop me from leaving."⁹ Appellant grabbed Stephanie around the waist and grabbed her arm.¹⁰

¹ *In re: Kyle M.*, 200 Ariz. 447, 27 P.3d 804 (App. 2001).

² *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

³ *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁴ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁵ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

⁶ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

⁷ SUPRA.

⁸ *Id.* At 553, 633 P.2d at 362.

⁹ R.T. of March 29, 2001, at page 8.

¹⁰ *Id.* at page 9.

Appellant then stepped in front of Stephanie to prevent her from walking away from him.¹¹ Stephanie Britton testified that she was upset, fearful and afraid that Appellant was going to hurt her. She was worried that Appellant would become violent with her.¹² Appellant's acts were voluntary, not the product of mistake, duress or coercion. This Court further concludes that Appellant's intimidating conduct and actions constituted a "true threat" to Stephanie Britton.

Next, Appellant contends that A.R.S. Section 13-1202(A)(1) is unconstitutionally vague because it fails to state a specific culpable mental state as a requirement. The Arizona Court of Appeals has rejected a similar argument and inferred from the statute an intent requirement: that the statute requires communication of a "true threat".¹³ Since this Court has determined that Appellant made a "true threat" by his voluntary actions, Appellant's constitutional argument is without merit. Lastly, Appellant challenges the sufficiency of the evidence to warrant his conviction. This Court has already discussed this issue in the context of the evidence sufficient to show a culpable mental state. And, this Court concludes that substantial evidence was presented to the trial court to warrant Appellant's conviction.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the East Mesa Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the East Mesa Justice Court for further and future proceedings.

¹¹ Id. at page 10.

¹² Id.

¹³ In re: Kyle M., supra.